IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICITON

ARBITRATION PETITION NO. 46 OF 2006

Ramnath Madhav Acharya]
Age 44 yrs., Occ. Business,]
R/o. Amey Apartment,]
Behind Opel Hotel,]
Rukmini Nagar, Kolhapur] ...Petitioner

VERSUS

Balkrishna Vhannayya Shetty]
Age 55 yrs., Occ. Business]
R/o. C.T.S. No. 285/3]
Rukmini Apartments]
Mahadik Vasahat, Kolhapur] ...Respondent

Mr. A.B. Borkar for the Petitioner

Mr. P.D. Pathan for the Respondent.

CORAM: SWATANTER KUMAR, C.J.

Judgment reserved on: June 8, 2007
Judgment pronounced on: June 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. This is a petition under Sections 11(4) and 6 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”),

praying for appointment of an independent Arbitrator to determine the disputes which have arisen between the parties.

2. It is not necessary for me to state the facts giving rise to the present petition, as they are not much in dispute. The petitioner is engaged in business of hoteling. The petitioner and the respondent entered into a partnership on 11th June, 1996 to carry on the business under the name and style of "M/s. Hotel Pooja Delux". Certain disputes arose between the parties in relation to the management and affairs of the partnership; and the respondent issued a notice through his Advocate on 25th March, 2006, making various allegations against the petitioner; and it was stated that there has been loss of Rs.5,00,178.25 to the partnership concern. According to the petitioner, the respondent was maintaining the books of account, and he also made certain allegations against him, and served the notice through his counsel on 10th April, 2006. As such, various disputes arose between the parties. The petitioner also filed a petition under Section 9 of the Act, being Arbitration Petition (Misc. Application) No. 118 of 2006, and had also filed an application for appointment of a Receiver, which was contested by the respondent and finally, vide order

dated 29th September, 2006, the Receiver was appointed, and it was also directed that remuneration of the Receiver at the rate of Rs.3,000/- per month be paid.

3. The partnership-deed executed between the parties contained an arbitration clause, which reads as under:-

> "16. Any dispute arising between the partners regarding the business of the Partnership Firm or breach of any of the above terms and conditions shall be decided by the arbitration under the provisions of the Indian Arbitration Act of 1940 then in force."

Despite the above, the parties did not appoint their Arbitrator and commence arbitration proceedings in accordance with law, resulting in filing of the present petition. The petitioner, in the present petition, has averred that he has various claims against the respondent, while, according to the respondent, he has claims against the petitioner. The execution of the arbitration clause and its validity are not in dispute. In fact, during the course of arguments, the learned counsel appearing for the parties submitted that Mr. Subray Ramkirshna Baliga, who was appointed

as the Receiver by the Court, be also appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

4. In terms of the arbitration clause, the disputes are to be referred to the Arbitrator in accordance with the provisions of the Indian Arbitration Act, 1940. As the parties have already agreed to the appointment of a sole Arbitrator and refer all their disputes to the said Arbitrator, nothing material survives for adjudication before the Court in the present petition.

5. Consequently, this petition is disposed of. At the request of the parties, Mr. Subray Ramkirshna Baliga is appointed as Sole Arbitrator. Parties are granted liberty to file their claim and counter claim before the Arbitrator, who shall proceed with the matter in accordance with law. As the disputes between the parties relate to carrying on the business of partnership concern, it would be desirable that the proceedings are concluded expeditiously. The petition is accordingly disposed of, leaving the parties to bear their own costs.

CHIEF JUSTICE.